

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

)
SMARTMATIC USA CORP.,)
SMARTMATIC INTERNATIONAL)
HOLDING B.V., and SGO)
CORPORATION LIMITED,,)
) Case No.
Plaintiff,) 22-cv-0098-WMW-JFD
)
vs.)
)
MICHAEL J. LINDELL and)
MY PILLOW, INC.)
)
Defendants.)
-----)

STATEMENT OF NON APPEARANCE non-appearance of:

CONAN HAYES

Los Angeles, California

Friday, August 18, 2023

Volume I

Reported by:

LORI M. BARKLEY

CSR No. 6426

Job No. MW 6057245

PAGES 1 - 12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SMARTMATIC USA CORP.,
SMARTMATIC INTERNATIONAL
HOLDING B.V., and SGO
CORPORATION LIMITED,,
Plaintiff,
vs.
MICHAEL J. LINDELL and
MY PILLOW, INC.
Defendants.

) Case No.

) 22-cv-0098-WMW-JFD

Videotaped Statement of counsel re:

Non-appearance of Conan Hayes, taken at 707 Wilshire
Blvd., Suite 3500, Los Angeles, California, beginning at
10:21 a.m. and ending at 10:36 a.m. on Friday, August
18, 2023 before LORI M. BARKLEY, Certified Shorthand
Reporter No. 6426.

1 APPEARANCES:

2
3 BENESCH LAW

4 BY: Timothy M. Frey

5 Maura Levine-Patton (Via Zoom)

6 Attorneys at Law

7 71 South Wacker Drive, Suite 1600

8 Chicago, IL 60606

9 312-624-6365

10 Tfrey@beneschlaw.com

11 Mlevine-patton@beneschlaw.com

12
13 PARKER DANIELS KIBORT LLC

14 BY: Abraham S. Kaplan (via Zoom)

15 Attorney at Law

16 888 Colwell Building

17 123 North Third Street

18 Minneapolis, Minnesota 55401

19 612-355-4100

20 Kaplan@parkerdk.com

21
22 Videographer: Julio Pena

I N D E X

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 326	Subpoena for Documents and Testimony	6
Exhibit 327	Proof of Service	6
Exhibit 328	Levin-Patton E-Mail to Hayes, August 4, 2023	7
Exhibit 329	Check and Documents Served on Hayes on August 11, 2023	8
Exhibit 330	Proof of Service From August 11th, 2023	8
Exhibit 331	E-Mail Exchange Between Hayes and Frey, August 18, 2023	11

1 Los Angeles, California; Friday, August 18, 203

2 10:21 a.m.

3
4
5 VIDEO OPERATOR: Good morning. We are on the
6 record at 10:21 a.m. on August 17, 2023.

7 Please note that microphones are sensitive and
8 may pick up whispering and private conversations. Audio
9 and video recording will continue to take place unless
10 all parties agree to go off the record.

11 This is the video-recorded deposition of Conan
12 Hayes taken by counsel for plaintiff in the matter of
13 Smartmatic USA Corp., et al., versus Michael Lindell and
14 MyPillow.

15 My name is Julio Pena from Veritext, and I am
16 the videographer. The court reporter is Lori Barkley
17 from Veritext.

18 I am not related any party in this action, nor
19 am I financially interested in the outcome.

20 If there are any objections to proceeding,
21 please state them at the time of your appearance,
22 beginning with the noticing attorney.

23 MR. FREY: This is Tim Frey on behalf of
24 plaintiffs.

25 MS. LEVINE-PATTON: Maura Levine-Patton on

1 behalf of plaintiff.

2 MR. KAPLAN: Abraham Kaplan on behalf of
3 defendants.

4 MR. FREY: I'll proceed, thank you.

5 Mr. Conan James Hayes has not appeared today at
6 his deposition.

7 Mr. Hayes was served with a subpoena to produce
8 documents and a subpoena to testify at a deposition in a
9 civil action.

10 The subpoena is being entered as Exhibit 326.

11 (Exhibit 326 was marked for identification by
12 the court reporter and is attached hereto.)

13 MR. FREY: The subpoena for documents has a
14 return date of August 7th, 2023, and a deposition date
15 of August 18th, 2023; that is today.

16 The subpoena for documents and the subpoena for
17 deposition was served on Mr. Hayes on July 21st, 2023.

18 The proof of service is being entered as Exhibit
19 327.

20 (Exhibit 327 was marked for identification by
21 the court reporter and is attached hereto.)

22 MR. FREY: The proof of service states that Mr.
23 Hayes was personally served at his home address of 2169
24 Highgate Road, Westlake Village, California 91361, on
25 July 21st, 2003 at 12:38 p.m.

1 Mr. Hayes was served at that time with a notice
2 of subpoena to produce documents and a subpoena to
3 testify at a deposition in a civil action.

4 On August 4th, 2023, Smartmatic attorney Maura
5 Levine-Patton e-mailed Mr. Hayes at cjh@Criptext.com in
6 order to confirm that the August 18th, 2023 date would
7 work in his schedule.

8 This e-mail will be entered as Exhibit 328.

9 (Exhibit 328 was marked for identification by
10 the court reporter and is attached hereto.)

11 MR. FREY: In the e-mail, Ms. Levine-Patton told
12 Mr. Hayes that per the attached subpoena for documents
13 and deposition and the attached proof of service, Mr.
14 Hayes' document production was due on August 7th, 2023.

15 Ms. Levine-Patton also noted in the e-mail that
16 Mr. Hayes was due to be deposed on August 18th, 2023 per
17 the subpoena.

18 Mr. Hayes did not respond to the e-mail.

19 The subpoena to serve documents state that --
20 states that Mr. Hayes was required to produce documents
21 on August 7th, 2023. Mr. Hayes did not produce any
22 documents in response to his subpoena.

23 On August 8th, 2003, counsel Levine-Patton
24 e-mailed Mr. Hayes again. This is on the same e-mail
25 chain reflected in Exhibit 328.

1 Ms. Levine-Patton told Mr. Hayes that his
2 document production was deficient, and that per the
3 deposition subpoena, his deposition would be held on
4 August 18th, 2023 at 10 a.m.

5 Mr. Hayes did not respond to this e-mail, and
6 Ms. Levin-Patton did not receive a bounce back
7 non-delivery notification to that e-mail.

8 On August 11th, 2023, Mr. Hayes was served at
9 his home address with a check for \$94 and a packet of
10 documents.

11 This will be entered as Exhibit 329.

12 (Exhibit 329 was marked for identification by
13 the court reporter and is attached hereto.)

14 MR. FREY: The documents Mr. Hayes was served
15 with his check included an affidavit of
16 Ms. Levine-Patton regarding the witness fee check
17 pursuant to 20 USC 1821B and a copy of his initial
18 subpoena for deposition testimony and the proof of
19 service from his initial deposition subpoena.

20 There is also a proof of service from August
21 11th, 2023, showing that Mr. Hayes was served at
22 a.m. at his home and was given affidavit, exhibits and
23 witness fees of \$94.

24 This will be entered as Exhibit 330.

25 (Exhibit 330 was marked for identification by

1 the court reporter and is attached hereto.)

2 MR. FREY: Yesterday, on August 17th, at
3 approximately 11:30 a.m. Pacific time, Mr. Hayes
4 contacted Smartmatic attorney Michael Bloom via
5 telephone.

6 Mr. Hayes informed Mr. Bloom that he would not
7 be able to appear at his deposition today. And he did
8 not intend to.

9 I then contacted Mr. Hayes and we spoke at
10 approximately 3:50 p.m. Pacific time. I informed Mr.
11 Hayes that we had attempted to contact him on several
12 occasions to confirm the date for his deposition, and
13 that there was an enforceable for his attendance today,
14 and that we intended to go forward in accordance with
15 the subpoena.

16 Late last night, Mr. Hayes again e-mailed to
17 state that he was not available and would not appear.

18 First thing this morning, I wrote back informing
19 him that we would proceed to open a deposition as
20 required by the subpoena, and as I had told him on the
21 phone.

22 The time is now 10:27 a.m. Pacific time.

23 Mr. Hayes has not appeared. I am therefore
24 suspending this deposition at this time.

25 MR. KAPLAN: Are we still on the record?

1 MR. FREY: Yes, we are.

2 MR. KAPLAN: Are you putting in your e-mail as
3 an exhibit back and forth with Mr. Hayes?

4 MR. FREY: I did not have the opportunity to
5 print that off. But in a motion to compel compliance,
6 that will be an exhibit.

7 MR. KAPLAN: Okay.

8 THE REPORTER: Okay to go off the record?

9 MR. FREY: Counsel, would you like --

10 MR. KAPLAN: I think it would be appropriate to
11 put it in the record. Create it as an exhibit.

12 MR. FREY: Counsel, let's go off the record
13 briefly, we will get that printed and we will put it on
14 the record.

15 VIDEO OPERATOR: The time is 10:28. And we're
16 going off the record.

17

18 (Recess taken.)

19

20 VIDEO OPERATOR: The time is 10:35. And we're
21 back on the record.

22 MR. FREY: Good morning, the time is now 10:35.

23 We have printed out a copy of the e-mail
24 exchange with Mr. Hayes this morning. Mr. Hayes wrote
25 to me and my colleague Michael Bloom last night at 10:14

1 p.m.

2 I wrote back this morning at 7:26 a.m. to Mr.
3 Hayes copying Mr. Bloom and Mr. Kaplan. This will be
4 entered as Exhibit 331.

5 (Exhibit 331 was marked for identification by
6 the court reporter and is attached hereto.)

7 MR. FREY: The time is now 10:36 and Mr. Hayes
8 has still not appeared. So again, I'm going to suspend
9 this deposition, pending Mr. Hayes' compliance.

10 VIDEO OPERATOR: The time is 10:36. And we're
11 going off the record.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA) ss.

2 COUNTY OF LOS ANGELES)

3
4 I, Lori M. Barkley, CSR No. 6426, do hereby
5 certify:

6 That the foregoing proceedings were taken before
7 me at the time and place therein set forth and were
8 recorded stenographically by me, and were thereafter
9 transcribed under my direction and supervision, and that
10 the foregoing pages contain a full, true and accurate
11 record of all proceedings to the best of my skill and
12 ability.

13 I further certify that I am neither counsel for
14 any party to said action, nor am I related to any party
15 to said action, nor am I in any way interested in the
16 outcome thereof.

17 IN WITNESS WHEREOF, I have subscribed my name
18 this 18th day of August, 2023.

19 

20 _____
21 LORI M. BARKLEY, CSR No. 6426
22
23
24
25

[0098 - available]

Page 1

0	8:4,8,21 12:18	7	angeles 1:18
0098 1:8 2:8	203 5:1	7 4:9	2:16 5:1 12:2
1	2169 6:23	707 2:15	appear 9:7,17
1 1:25	21st 6:17,25	71 3:7	appearance
10 8:4	22 1:8 2:8	7:26 11:2	1:16,16 2:15
10:21 2:17 5:2	3	7th 6:14 7:14	5:21
5:6	312-624-6365	7:21	appearances
10:27 9:22	3:9	8	3:1
10:28 10:15	326 4:6 6:10,11	8 4:10,12	appeared 6:5
10:35 10:20,22	327 4:8 6:19,20	888 3:16	9:23 11:8
10:36 2:17 11:7	328 4:9 7:8,9	8th 7:23	appropriate
11:10	7:25	9	10:10
11 4:11,13	329 4:10 8:11	91361 6:24	approximately
11:30 9:3	8:12	94 8:9,23	9:3,10
11th 4:12 8:8	330 4:12 8:24	a	attached 6:12
8:21	8:25	a.m. 2:17,17	6:21 7:10,12
12 1:25	331 4:13 11:4,5	5:2,6 8:4,22	7:13 8:13 9:1
123 3:17	3500 2:16	9:3,22 11:2	11:6
12:38 6:25	3:50 9:10	ability 12:12	attempted 9:11
1600 3:7	4	able 9:7	attendance
17 5:6	4 4:9	abraham 3:14	9:13
17th 9:2	4th 7:4	6:2	attorney 3:15
18 1:19 2:18	5	accordance	5:22 7:4 9:4
4:14 5:1	55401 3:18	9:14	attorneys 3:6
1821b 8:17	6	accurate 12:10	audio 5:8
18th 6:15 7:6	6 4:6,8	action 5:18 6:9	august 1:19
7:16 8:4 12:18	6057245 1:24	7:3 12:14,15	2:17 4:9,11,12
2	60606 3:8	address 6:23	4:14 5:1,6 6:14
20 8:17	612-355-4100	8:9	6:15 7:4,6,14
2003 6:25 7:23	3:19	affidavit 8:15	7:16,21,23 8:4
2023 1:19 2:18	6426 1:23 2:19	8:22	8:8,20 9:2
4:9,11,12,14	12:4,21	agree 5:10	12:18
5:6 6:14,15,17	6966 12:19	al 5:13	available 9:17
7:4,6,14,16,21			

[b.v. - full]

Page 2

b	colleague 10:25 colwell 3:16 compel 10:5 compliance 10:5 11:9 conan 1:17 2:15 5:11 6:5 confirm 7:6 9:12 contact 9:11 contacted 9:4,9 contain 12:10 continue 5:9 conversations 5:8 copy 8:17 10:23 copying 11:3 corp 1:6 2:5 5:13 corporation 1:7 2:7 counsel 2:14 5:12 7:23 10:9 10:12 12:13 county 12:2 court 1:1 2:1 5:16 6:12,21 7:10 8:13 9:1 11:6 create 10:11 criptext.com 7:5 csr 1:23 12:4 12:21	cv 1:8 2:8 d d 4:1 daniels 3:13 date 6:14,14 7:6 9:12 day 12:18 defendants 1:12 2:11 6:3 deficient 8:2 delivery 8:7 deposed 7:16 deposition 5:11 6:6,8,14,17 7:3 7:13 8:3,3,18 8:19 9:7,12,19 9:24 11:9 description 4:5 direction 12:9 district 1:1,2 2:1,2 document 7:14 8:2 documents 4:6 4:10 6:8,13,16 7:2,12,19,20,22 8:10,14 drive 3:7 due 7:14,16 e e 4:1,9,13 7:5,8 7:11,15,18,24 7:24 8:5,7 9:16 10:2,23	enforceable 9:13 entered 6:10,18 7:8 8:11,24 11:4 et 5:13 exchange 4:13 10:24 exhibit 4:6,8,9 4:10,12,13 6:10,11,18,20 7:8,9,25 8:11 8:12,24,25 10:3,6,11 11:4 11:5 exhibits 4:4 8:22 f fee 8:16 fees 8:23 financially 5:19 first 9:18 foregoing 12:6 12:10 forth 10:3 12:7 forward 9:14 frey 3:4 4:14 5:23,23 6:4,13 6:22 7:11 8:14 9:2 10:1,4,9,12 10:22 11:7 friday 1:19 2:17 5:1 full 12:10
b.v. 1:7 2:6 back 8:6 9:18 10:3,21 11:2 barkley 1:22 2:18 5:16 12:4 12:21 beginning 2:16 5:22 behalf 5:23 6:1 6:2 benesch 3:3 beneschlaw.c... 3:10,11 best 12:11 bloom 9:4,6 10:25 11:3 blvd 2:16 bounce 8:6 briefly 10:13 building 3:16 c california 1:18 2:16 5:1 6:24 12:1 case 1:8 2:7 certified 2:18 certify 12:5,13 chain 7:25 check 4:10 8:9 8:15,16 chicago 3:8 civil 6:9 7:3 cjh 7:5			

[further - pacific]

Page 3

further 12:13	informing 9:18	los 1:18 2:16	n
g	initial 8:17,19	5:1 12:2	n 4:1
given 8:22	intend 9:8	m	name 5:15
go 5:10 9:14	intended 9:14	m 1:22 2:18 3:4	12:17
10:8,12	interested 5:19	12:4,21	neither 12:13
going 10:16	12:15	mail 4:9,13 7:8	night 9:16
11:8,11	international	7:11,15,18,24	10:25
good 5:5 10:22	1:6 2:6	8:5,7 10:2,23	non 1:16,16
h	j	mailed 7:5,24	2:15 8:7
hayes 1:17 2:15	j 1:10 2:10	9:16	north 3:17
4:9,11,13 5:12	james 6:5	marked 6:11	note 5:7
6:5,7,17,23 7:1	jfd 1:8 2:8	6:20 7:9 8:12	noted 7:15
7:5,12,14,16,18	job 1:24	8:25 11:5	notice 7:1
7:20,21,24 8:1	julio 3:22 5:15	matter 5:12	noticing 5:22
8:5,8,14,21 9:3	july 6:17,25	maura 3:5 5:25	notification 8:7
9:6,9,11,16,23	k	7:4	number 4:5
10:3,24,24	kaplan 3:14,20	michael 1:10	o
11:3,7,9	6:2,2 9:25 10:2	2:10 5:13 9:4	objections 5:20
held 8:3	10:7,10 11:3	10:25	occasions 9:12
hereto 6:12,21	kibort 3:13	microphones	okay 10:7,8
7:10 8:13 9:1	l	5:7	open 9:19
11:6	late 9:16	minneapolis	operator 5:5
highgate 6:24	law 3:3,6,15	3:18	10:15,20 11:10
holding 1:7 2:6	levin 4:9 8:6	minnesota 1:2	opportunity
home 6:23 8:9	levine 3:5 5:25	2:2 3:18	10:4
8:22	5:25 7:5,11,15	mlevine 3:11	order 7:6
i	7:23 8:1,16	morning 5:5	outcome 5:19
identification	limited 1:7 2:7	9:18 10:22,24	12:16
6:11,20 7:9	lindell 1:10	11:2	p
8:12,25 11:5	2:10 5:13	motion 10:5	p.m. 6:25 9:10
il 3:8	llc 3:13	mw 1:24	11:1
included 8:15	lori 1:22 2:18	mypillow 5:14	pacific 9:3,10
informed 9:6	5:16 12:4,21		9:22
9:10			

[timothy - zoom]

Page 5

timothy 3:4	wmw 1:8 2:8
today 6:5,15	work 7:7
9:7,13	wrote 9:18
told 7:11 8:1	10:24 11:2
9:20	x
transcribed	x 4:1
12:9	y
true 12:10	yesterday 9:2
u	z
under 12:9	zoom 3:5,14
united 1:1 2:1	
usa 1:6 2:5 5:13	
usc 8:17	
v	
veritext 5:15,17	
versus 5:13	
video 5:5,9,11	
10:15,20 11:10	
videographer	
3:22 5:16	
videotaped	
2:14	
village 6:24	
volume 1:20	
vs 1:9 2:9	
w	
wacker 3:7	
way 12:15	
westlake 6:24	
whereof 12:17	
whispering 5:8	
wilshire 2:15	
witness 8:16,23	
12:17	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.